

**TEXAS DEPARTMENT OF HEALTH  
FINAL ADOPTION OF RULES FOR BOARD OF HEALTH APPROVAL  
COVER MEMORANDUM**

**July 2000**

**Agenda Item No:** 3A

**Requestor:** John Evans, M.H.A.  
Deputy Commissioner  
Community Health and Prevention

**Summary:** This is to request final adoption of the rules concerning the procedures for awarding grants to school districts to support the operation of school-based health centers, and establishing standards for health centers funded through grants from the Texas Department of Health (department). State law requires the department to establish rules to award grants to at least two applicants each year of the biennium, and limits grants to no more than \$250,000 per applicant per biennium.

**Presented to the Board of Health for Publication in the Texas Register:** The proposed rules were approved by the Board of Health on May 17, 2000, for publication in the *Texas Register*. The proposed rules were published in the Texas Register on June 9, 2000, for public comment (25 TexReg 5550).

**Comments:** The comments received were generally favorable of the rules as proposed; however many of the commentors had questions or specific concerns, and/or offered suggestions for changes. A summary of comments received and the department's responses are provided in the attached adoption preamble.

**Legal Considerations:** Approved by the Office of General Counsel \_\_\_\_\_

**Recommended Board Action:** Approve an order adopting the rules concerning school-based health centers to be effective 20 days after filing with the Texas Register Division, Office of the Secretary of State.

Title 25. Health Services  
Part I. Texas Department of Health  
Chapter 37. Maternal and Infant Health Services  
Subchapter T. School-Based Health Centers  
New §§37.531-37.538

### **ADOPTION PREAMBLE**

The Texas Department of Health (department) adopts new §§37.531-37.538 concerning school-based health centers. Sections 37.532, 37.537, and 37.538 are adopted with changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5550). Sections 37.531 and 37.533-37.536 are adopted without change, and therefore will not be republished.

The new sections implement House Bill 2202, Acts 1999, 76th Legislature, §1, which added Education Code, §§38.0095, 38.011, and 38.012. This legislation requires the Texas Board of Health (board) to adopt rules to establish procedures for awarding grants to assist school districts with the costs of operating school-based health centers, and to establish standards for health care centers supported by such grants. Adoption of these sections will assure that grants to support school-based health centers will be awarded fairly and consistently and that the goals which funded health centers strive to attain also are consistent with department policy. Specifically, the sections cover the purpose of the rules; definitions; number of awards; dollar amount of awards; matching funds; competitive process, guidelines for requests for proposals; and standards for school-based health centers.

The sections include changes made in response to comments, with the objective of increasing flexibility during implementation of the program in a manner consistent with the intent of the legislation. Particular concerns and suggestions by stakeholders included such issues as reproductive services, program protocols, funding sources, and the number and location of funded school-based health centers.

The department is making the following minor changes to clarify the intent and improve the accuracy of the sections.

**Change:** Concerning new §37.532(8), a definition of "parent" has been added to avoid the necessity of repeating the phrase "parent, guardian, or other person having legal control of the student" in several sections. Sections 37.532(8) and 37.532(9) as proposed have been renumbered.

**Change:** Concerning §37.538(2)(i), the phrase "or guardian" has been deleted because it is included in the definition of "parent" added at §37.532(8).

**Change:** Concerning §37.538(2)(ii), the phrase "or guardian" has been deleted because it is included in the definition of "parent" added at §37.532(8).

**Change:** Concerning §37.538(2)(E)(v), the phrase "guardian, or other person having legal control of the student" has been deleted because it is included in the definition of "parent" added at §37.532(8).

**Change:** Concerning §37.538(2)(E)(v), the department has clarified the reference to "consent" by adding that "informed consent" is required for some procedures or services involving risks or hazards to the student, for the protection of the school district, the provider, as well as the student.

**Change:** Concerning §37.538(2)(E)(viii), the phrase "concerning the clinical treatment" has been added to clarify that coordination by the staff of the school-based health center staff with a student's primary care physician includes a clinical component which impacts the quality of care provided, as well as the necessity to obtain prior authorization for services in order to seek reimbursement from third-party payors.

**Change:** Concerning §37.538(2)(E)(xi), a new clause has been added to clarify that school-based health centers must maintain documentation of their efforts, required by other sections of the rules, to involve the student's parent in identification of the student's health-related concerns as well as notification of the student's parent of scheduled appointments and proposed services, coordination with the student's primary care physician, and consent for services by the student's parent, including informed consent when required for specific services.

The following comments concerning the proposed rules were received during the public comment period. Following each comment is the department's response and any resulting change(s).

**Comment:** Concerning the subchapter as a whole, one commenter stated that the department should award grant funds only to those school-based health centers that plan to provide comprehensive services to children.

**Response:** Education Code, §38.011 requires that school districts, with assistance from their local health care advisory councils, assess the need for school-based health centers, and then determine the types of services to be provided. The department will evaluate those decisions as part of an applicant's proposal for funding, but has chosen not to require the provision of specific "comprehensive health care services". No changes were made as a result of this comment.

**Comment:** Concerning the subchapter as a whole, one commenter stated that the department should require school districts to collaborate with health care agencies in order to receive funds.

**Response:** Education Code, §38.011(h) authorizes but does not require a school district to collaborate with public health agencies in the community, and §38.011(b) authorizes a school district to contract with persons, to provide services at a school-based health center. The department strongly encourages local school districts to collaborate with any providers of health care services in their communities, including individual persons. No changes were made as a result of this comment.

**Comment:** Concerning the subchapter as a whole, one commenter stated that the department should fund at least one school-based health center in each of the major cities in Texas with an equal number being funded in heavily populated urban areas, moderate sized cities, and rural areas.

**Response:** Education Code, §38.011(p) requires that grants be awarded annually on a competitive basis and that school districts located in rural areas or that have low property wealth per student must be given preference in funding decisions. No changes were made as a result of this comment.

**Comment:** Concerning the subchapter as a whole, one commenter suggested that the department should require funded applicants to participate in the Texas Association of School-Based Health Care as well as the National Assembly For School-Based Health Care.

**Response:** The department disagrees. While the department supports participation by school districts in professional organizations, requiring such activities by rule exceeds the scope of the Legislature's mandate. No changes were made as a result of this comment.

**Comment:** Concerning §37.533, several commenters requested that the department fund more than two grant applications per year.

**Response:** The department's legislative appropriation for school health activities during the current biennium is finite. The department agrees that the mandate from the Legislature to fund at least two school-based health center contracts per year is a minimum standard rather than a maximum limit. No changes were made as a result of this comment.

**Comment:** Concerning §37.533, commenters requested that the department continue to fund established school-based health centers as well as applicants for new grants.

**Response:** The department interprets references at Education Code §38.011(b) and §38.011(h) to apply to school districts which seek assistance with the initial establishment of a school-based health center, subject to availability of federal or state appropriated funds. No changes were made as a result of this comment.

**Comment:** Concerning §37.537(5), one commenter recommended that the department should evaluate applicants' proposals on the basis of their "stated willingness" as well as their ability to comply with the standards for school-based health centers.

**Response:** The department agrees and has amended the section accordingly.

**Comment:** Concerning §37.538, one commenter suggested that the following language should be added as a new subsection (5). "Compliance. A funded applicant shall be subject to audit by the department in order to ensure that all department requirements are being met. A funded

applicant must also provide the following: (A) An annual written report detailing the methods by which the funded applicant has met department requirements; and (B) A statement signed by a representative of the school district that states that the district has made a good faith effort to meet all requirements of the department."

**Response:** The department agrees that a funded applicant will be obligated by rule and its contract to expend grant funds only as described in its application. Section 37.538(4)(B)(iv) requires funded applicants to produce an annual report with data evaluating the effectiveness of the school-based health center, including its impact on student attendance and performance. Since the annual report already required should enable the department to determine if a funded applicant is complying with program standards, mandating an additional report as suggested appears unnecessary. The department has added a new paragraph §37.538(5) requiring annual assurances by representatives of funded applicants of their good faith efforts to meet all department requirements.

**Comment:** Concerning §37.538(1), one commenter recommended that the paragraph be amended to clarify that school-based health centers must comply with "all" strategies listed for facilitating community-based solutions.

**Response:** The department agrees and has amended the section accordingly.

**Comment:** Concerning §37.538(1)(D), one commenter recommended that funded applicants should "require" rather than "encourage" parental involvement, including accompaniment of the child and attendance at school-based health center appointments.

**Response:** The department agrees that funded applicants should require parental involvement in the health care services their children receive at and through school-based health centers and has amended the section accordingly. However, requiring parental accompaniment would mean some children whose parent(s) are interested and wish to be involved would be denied services at school-based health centers if their parent(s) could not accompany them. The department will continue to "encourage" parental accompaniment of their children when receiving services at school-based health centers and attendance at appointments.

**Comment:** Concerning §37.538(1)(D), one commenter recommended that parental accompaniment be encouraged for any child younger than 18 years of age.

**Response:** The department agrees and has amended the section accordingly.

**Comment:** Concerning §37.538(2)(E)(i), one commenter recommended adding the words "or other person having legal control of the student".

**Response:** The department has added a definition of "parent" at §37.532(8), which includes the word "guardian" as well as the phrase "or other person having legal control of the student" when used in this subchapter. No changes were made as a result of this comment.

**Comment:** Concerning §37.538(2)(E)(iii), one commenter suggested that "reproductive services" should be defined as "family planning services" is defined at 25 Texas Administrative Code (TAC) §56.102, but added that referrals for treatment of sexually transmitted diseases or prenatal care would not be excluded by such an amendment.

**Response:** The department agrees and has added new §37.532(9). The department agrees that treatment for sexually transmitted diseases and prenatal care is not within the scope of "reproductive services" as defined at 25 TAC §56.102. No changes were necessary to clarify the ability of school-based health centers to provide referrals for sexually transmitted diseases or prenatal care.

**Comment:** Concerning §37.538(2)(E)(iii), several commenters stated that school-based health centers receiving grant funds should be prohibited from providing reproductive services, counseling, or referrals even if the services are paid for with other nongrant funds.

**Response:** The department agrees and has amended the section accordingly.

**Comment:** Concerning §37.538(2)(E)(iii), several commenters stated that school-based health centers should not provide contraceptives, abortions, and/or referrals to Planned Parenthood.

**Response:** By law, school-based health centers may not provide reproductive services, as defined at §37.532(8). No changes were made as a result of this comment.

**Comment:** Concerning §37.538(2)(E)(v), one commenter requested that the phrase "for each treatment occasion" be added.

**Response:** The department has added the phrase, including clarification that a student's parent may provide specific written consent for more than one treatment occasion at once. The department also has deleted the definition of "treatment occasion" which was proposed as §37.532(10) because it is inconsistent with the Legislature's intent, stated at Education Code, §38.011(f).

**Comment:** Concerning §37.538(2)(E)(viii), one commenter suggested that coordination with the person's primary physician before delivering a service should include "obtaining an authorization form" from the physician.

**Response:** The department agrees that school-based health centers must obtain authorization prior to delivery of services if a student has a primary care physician under Medicaid or another health plan in order to seek reimbursement and has amended the section accordingly.

**Comment:** Concerning §37.538(3)(A)-(E), one commenter stated that the referenced population-based strategies are too vague, and that the department should adopt and implement protocols.

**Response:** The department believes these more general strategies rather than specific protocols will allow community-based programs to address their unique needs in culturally appropriate ways in line with current practice patterns in their own regions of the state. No changes were made as a result of this comment.

The following commenters were generally in favor of the rules, but had concerns, questions, and/or suggestions for change: Representative Arlene Wohlgemuth; Citizens for Excellence in Education; Global Maintenance Services, Inc.; and Campus Care Centers, Brownsville, Texas.

The following commenter had questions and suggestions for change, but was neither for nor against the rules in their entirety: Hays Consolidated Independent School District.

The new sections are adopted under Education Code, §38.011(n), which requires the commissioner of health to adopt rules to establish procedures for awarding grants in accordance with the section; Education Code, §38.011(q), which requires the commissioner of health to adopt rules establishing standards for health care centers funded through said grants; and Health and Safety Code, §12.001, which authorizes the Texas Board of Health (board) to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

**Legend:** (New Rules - With changes to proposed version)

Double underline = New language not proposed

**[Bold, Underline, and Brackets]** = Proposed new language now being deleted

Regular Print = Final language, same as proposed for final adoption

§37.531. Purpose. The purpose of these sections is to establish rules for awarding grants to assist school districts with the costs of operating school-based health centers and to establish standards for the funded centers.

§37.532. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant - A school district applying for a grant from the Texas Department of Health to assist with the costs of operating a school-based health center.

(2) Conventional health services - Family and home support; health care, including immunizations; dental health care; health education; and preventive health strategies.

(3) Department - The Texas Department of Health.

(4) Funded applicant - A school district that applies for a grant from the Texas Department of Health to assist with the costs of operating a school-based health center and with which the Texas Department of Health subsequently executes a contract to operate a school-based health center.

(5) Grant - A sum of money awarded to a selected applicant on the basis of a Request for Proposals that results in a contract.

(6) Local health education and health care advisory council - Persons appointed by the board of trustees of a school district to make recommendations to the district concerning the establishment of school-based health centers and to assist the district in ensuring that local community values are reflected in the operation of each center. In addition to the majority of appointees who shall be parents of students, the board of trustees shall also appoint at least one person from each of the following groups:

- (A) teachers;
- (B) school administrators;
- (C) licensed health care professionals;
- (D) the clergy;



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- (E) law enforcement;
- (F) the business community;
- (G) senior citizens; and
- (H) students.

(7) Low property wealth per student - An assessed valuation per student in the applicant school district of no more than 25% of the state average assessed valuation per student.

(8) Parent - The mother, a man presumed to be the biological father, a man legally determined to be the biological father, a man who has been adjudicated to be the biological father by a court of competent jurisdiction, an adoptive mother or father, a guardian, or other person having legal control of the student.

(9) Reproductive services - Family planning services as defined by §56.102 of this title (relating to Definitions).

(10)~~[(8)]~~ Rural area - A county with a population of not greater than 50,000, or an area that has been designated under state or federal law as:

- (A) a health professional shortage area;
- (B) a medically underserved area; or
- (C) a medically underserved community as defined by the Center for Rural Health Initiatives.

(11)~~[(9)]~~ School-based health center - An entity established by a school district or by a school district jointly with a public health agency at one or more campuses in the school district to deliver cooperative health care programs, prevention of emerging health threats that are specific to the district, and conventional health services for students and their families.

**[(10) Treatment occasion - A number of instances of treatment that constitute a course of treatment for an identified problem or condition.]**

§37.533. Number of Awards. The department shall award grants to at least two applicants each state Fiscal Year.

§37.534. Dollar Amount of Awards. Grants awarded by the department shall not exceed \$250,000 per applicant per biennium.

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§37.535. Matching Funds. Funded applicants shall assure the department that matching funds obtained from nonfederal sources, including in-kind contributions, community or foundation grants, individual contributions, and local government agency operating funds, shall be available to the school-based health center project.

§37.536. Competitive Process. The department shall award grants to applicants annually through a competitive Request for Proposals (RFP) process administered in accord with all applicable policies and procedures of the department, including the RFP guidelines that appear in §37.537 of this title (related to Guidelines for Requests for Proposals).

§37.537. Guidelines for Requests for Proposals. The department shall complete one Request for Proposals (RFP) process for school-based health centers per state fiscal year according to the following guidelines.

(1) Proposals submitted in response to the RFP for school-based health centers shall be screened, reviewed, and evaluated according to a competitive process described in full in the RFP.

(2) The department's School Health Program shall utilize a standard evaluation instrument for scoring applicants' proposals. A copy of the instrument shall be included in the RFP.

(3) A primary review of all applicants' proposals shall be performed by a member of the School Health Program staff. The reviewer shall award the same number of bonus points to each applicant located in a rural area and/or that has low property wealth per student.

(4) The School Health Program shall select and train evaluators to score proposals after primary review.

(5) Proposals shall be evaluated based on the applicant's ability and stated willingness to comply with the department's standards for school-based health centers described in §37.538 of this title (relating to Standards for School-Based Health Centers).

§37.538. Standards for School-Based Health Centers. Funded applicants shall comply with the following standards for school-based health care centers.

(1) Community-based solutions. The funded applicant shall facilitate collaboration among families, schools, and members of the community to assess and meet the health needs of the community's children and families. The funded applicant shall utilize all the following strategies for facilitating community-based solutions:

(A) Establish a local health education and health care advisory council to make recommendations to the district on the establishment of school-based health centers and

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to assist the district in ensuring that local community values are reflected in the operation of each center and in the provision of health education.

(B) Establish and/or enhance links between school personnel, school-based health center personnel, other health/social services providers and agencies in the community, and other supportive community sectors.

(C) Enable students and families to be responsible decision-makers in promoting their own health and well-being, making connections with community systems that help to prevent the social isolation and alienation of individuals and families, and using the health care system wisely.

(D) Require **[Encourage]** parental involvement in and management of the health care of children receiving services from the center; encourage parental accompaniment of any child younger than 18 **[15]** years of age at visits to the center; notify the child's parent in writing at least one week in advance of the scheduled appointment; and encourage the parent to attend the appointment.

(2) Administration. The funded applicant shall plan and administer a school-based health center that meets the health needs of the community's children and families by use of the following strategies:

(A) Deliver primary and preventive health services to children and families in a school-based setting.

(B) Establish efficient, client-friendly procedures for utilizing all available sources of funding to compensate the district for services provided by the school-based health center, including money available under the state Medicaid program, a state children's health plan program, private health insurance or health benefit plans, and the ability of those using a school-based health center to pay for the services.

(C) Contract for provision of services at the school-based health center if necessary and appropriate.

(D) Develop and present a specific, detailed plan for future funding of the school-based health center that demonstrates how the center will continue to operate when grant funding is no longer available.

(E) Research, develop, and implement the forms and administrative procedures necessary to remain in compliance with all applicable and relevant legislation and regulations. Required procedures contained in applicable legislation for operation of school-based health centers include but are not limited to the following:

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(i) provision of services to a student only if the school district or the provider with whom the district contracts has obtained written consent to the services from the student's parent **[or guardian]** within the one-year period preceding the date on which the services are provided, and the consent has not been revoked;

(ii) joint identification by school-based health center staff and the student's parent **[or guardian]** of any health-related concerns of the student that may affect the student's health and/or success in school;

(iii) provision of neither reproductive services, counseling, nor referrals through the school-based health center receiving **[using]** grant funds awarded under this subchapter;

(iv) provision of all services by only appropriately licensed, certified, or credentialed professionals as required by law;

(v) referral of a student for mental health services only upon notification of and with the written consent of the student's parent, which must be followed by written consent by the student's parent for each treatment occasion(s) authorized by the provider, including informed consent when required for specific services **[guardian, or other person having legal control of the student]**;

(vi) a good faith effort by staff of a school-based health center located in a rural area described by §37.532(8) of this title (relating to Definitions) to identify and coordinate with existing health care providers;

(vii) provision of notice by the staff of the school-based health center to the primary care physician of a student who has received services;

(viii) coordination by the staff of the school-based health center with the primary care physician concerning the clinical treatment of any person who has a primary care physician under the state Medicaid program or another health plan and obtaining authorization before delivering a service;

(ix) utilization of all available sources of funding to compensate the school district or provider with whom the district contracts for services provided by a school-based health center; **[and]**

(x) conduct or facilitation of the conduct of client surveys in school-based health centers by funded applicants; and **[.]**

(xi) documentation in the student's medical record of the school-based health center's efforts to involve the student's parent in identification of the student's health-related concerns; notification of the student's parent of scheduled appointments and proposed

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services; coordination with the student's primary care physician; and maintenance of written consent for treatment by the student's parent, including informed consent when required for specific services.

(3) Emphasis on prevention. A funded applicant shall provide for primary emphasis on the delivery of conventional health services and secondary emphasis on the implementation of population-based models that prevent emerging health threats by use of the following strategies:

(A) increasing substantially the number of children in the community with health-care (medical) homes;

(B) facilitating access to appropriate primary and preventive care for children and families;

(C) educating, enabling, and empowering individuals for healthier lifestyles;

(D) involving the community in identifying priorities and developing health promotion strategies; and

(E) relying on the evidence of effective prevention to develop interventions that can demonstrate impact.

(4) Focus on outcomes. A funded applicant shall focus on the achievement of outcomes that can be documented, using the following strategies:

(A) delivering conventional health services and disease prevention of emerging health threats through access to appropriate primary and preventive care for children and families through a program designed to achieve the following goals:

- (i) a reduction in student absenteeism and drop-out rates;
- (ii) an increase in each student's ability to meet his or her academic potential; and
- (iii) stabilization of each student's physical well-being.

(B) A funded applicant shall research, document, analyze, and evaluate outcomes, including the goals listed in subparagraph (A) of this paragraph, by activities that include but are not limited to the following:

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(i) gathering data and statistics, monitoring outcomes, and producing data by use of quantitative measurement systems to report on project impact as required by the Request For Proposals;

(ii) providing quarterly reports as required by the department;

(iii) conducting client surveys and other qualitative measures of client satisfaction; and

(iv) producing an annual written report that includes a project evaluation with baseline data; data and analysis from client surveys; any available statistics related to increased academic success, improved student health, and improved performance on student assessment instruments administered under Education Code, Chapter 39, Subchapter B; and other information as specified by the department.

(5) Compliance. A funded applicant shall provide to the department annually a statement signed by a representative of the school district stating that the district has made a good faith effort to meet all requirements of the department.

**AGENDA ITEM NO: 3A**

**TEXAS BOARD OF HEALTH**

**ORDER ADOPTING A RULE**

On July 26, 2000, the Texas Board of Health (board) by majority vote approved rules concerning school-based health centers.

It is therefore ordered by the board that the rules are hereby adopted. The rules and the preamble to the rules approved by the board are incorporated by reference in this order as if set forth at length verbatim in this order.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the board required by the Administrative Procedure Act, Government Code, Section 2001.033.

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J. C. Chambers, Chairman  
Texas Board of Health